

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MAX LEVAI, :

Plaintiff, :

-against- :

**ORDER**

MARLBOROUGH GALLERY INC., :

20-CV-7911 (AJN) (KNF)

STANLEY N. BERGMAN and FRANZ :

PLUTSCHOW, :

Defendants. :

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KEVIN NATHANIEL FOX

UNITED STATES MAGISTRATE JUDGE

On March 10, 2021, the court denied the defendants’ March 2, 2021 letter-motion “requesting an order (i) permitting Marlborough to proceed with its first set of proposed search terms pertaining to Plf.’s RFP Set 1 and (ii) resetting its substantial completion deadline from March 31, 2021 to April 21, 2021,” and directed the parties “to meet and confer in good faith and expeditiously, via telephone or a video conferencing platform, such as Zoom, and to resume their efforts towards a reasonable compromise in connection with the search terms raised in the defendants’ March 2, 2021 letter.” Docket Entry No. 60. On March 19, 2021 the parties submitted their “Joint Stipulation and Proposed Order Regarding Discovery Plan and Scheduling Order,” asserting that they “have re-engaged in the meet and confer process” and requesting, “[i]n order to allow time to complete the meet-and-confer process and complete the resulting discovery,” the modification of certain discovery deadlines set forth in the January 5, 2021 Civil Case Management Plan and Scheduling Order and the parties’ January 29, 2021 Joint Discovery Plan. Docket Entry No. 60. The parties seek to modify the following deadlines set forth in the January 5, 2021 scheduling order governing this action: (a) extend the deadlines to complete all

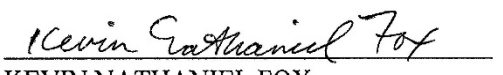
fact discovery, including fact depositions and requests to admit, from June 11, 2021, to July 9, 2021; (b) extend the deadline for completing all expert discovery from July 26, 2021, to August 23, 2021; and (c) extend the deadline for the parties to submit a letter seeking referral to a Magistrate Judge for a settlement conference from June 21, 2021, to July 19, 2021.

“A schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Although the parties assert that they “have re-engaged in the meet and confer process” and need more time to complete it, they failed to explain: (i) what, if anything, prevented them from completing their meet and confer exercise expeditiously, as ordered by the Court; (ii) the reasons why a compromise about the search terms could not be reached expeditiously, given that they already exchanged five search terms proposals, three by the defendant and two by the plaintiff, before the Court’s March 10, 2021 order; and (iii) why the deadlines set forth in the January 5, 2021 scheduling order require modification; and (iv) why the amount of time proposed is reasonable and appropriate. The only basis for the proposed modification of the January 5, 2021 scheduling order appears to be the parties’ agreement to modify their Joint Discovery Plan. However, the parties’ Joint Discovery Plan was not adopted by the court and, without more, the parties’ agreement to extend the deadlines does not constitute good cause to modify the schedule.

The parties failed to show good cause to modify the January 5, 2021 scheduling order. Accordingly, the Court will not endorse the parties’ Joint Stipulation and Proposed Order Regarding Discovery Plan and Scheduling Order, Docket Entry No.61.

Dated: New York, New York  
March 26, 2021

SO ORDERED:

  
KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE

